contract which cannot be split up. The terms may well have been different because of the size of the contract, and the whole transaction was on the understanding that but a single liability was to be incurred on each side. We must say, then, that the contract was between the third person and the agent only, and that by such a contract it is impossible to make the principals and the third party liable to each other. The principal case is the converse of *Roosevelt* v. *Doherty*, 129 Mass. 301, where the action was brought by one of the principals against the third party. The decision there supports that of the present case, but the question is dealt with by the court as if it were peculiar to the doctrine of undisclosed principal. It is evident, however, that, even had the principal been disclosed, the result must have been the same. As the case under discussion, where the principal was also undisclosed, proceeds on the broader ground, it is particularly valuable.

It is indeed possible to regard a stock broker not as an agent but as an independent buyer and seller. Accordingly the doctrines of agency would not apply, and in no case would the persons from whom and for whom he bought be directly liable to each other. It may well be doubted whether this view, though not recognized by the courts, is not more consonant with business usage.

LIMITATION OF LIABILITY BY A CARRIER. — That a common carrier may not lawfully contract against liability for injuries resulting to passengers from the negligence of its servants is a rule of almost universal application. *Railway Co.* v. *Lockwood*, 17 Wall. 357. Public policy requires such a rule for a twofold reason. Since the carrier has virtually a monopoly, and since the exigencies of business often require a man to get immediate transportation, though it may be at the sacrifice of his legal rights, it has its patrons at such a great disadvantage that it can readily exact from them a stipulation that it shall not be liable for negligence. In the great majority of cases also, the carrier gives nothing in return for this release of its common law obligation, and the agreement is therefore without consideration. Moreover, even though there may be consideration for such a contract, the welfare of the state requires that a common carrier should not be allowed to make any diminution in the care taken to protect its passengers from harm, and it is clear that a general limitation of that sort might readily result in a relaxation of its precautions to prevent accidents.

Whether one who is travelling on a gratuitous pass is to be put within the same category is a matter on which the authorities are in conflict. Some courts hold that the same grounds of public policy prohibit such a limitation as well in the one case as in the other. *Jacobus* v. *St. Paul, etc. R. R. Co.*, 20 Minn. 125. The better view, however, would seem to be that such a limitation is lawful. Clearly he is in no way at the mercy of the carrier in being forced to give up his common law rights, for he may, of course, pay his fare and retain such rights. Likewise it is evident that his being carried free is a sufficient consideration for the surrender of his right that the carrier be not negligent. Nor can it be said that this is likely to increase the recklessness of the carrier generally, and so has a tendency to injure other members of the public, for by the practice of issuing passes the carrier loses rather than gains, and it is probable, therefore, that free passes will be granted in only a very limited number of cases. Consequently there is no sound reason why public policy should

restrain a carrier from enforcing against the holder of a gratuitous pass an agreement by which the latter must bear the risks of transportation. *Quimby* v. *Boston, etc. R. R. Co.*, 150 Mass. 365.

Although this matter has been considered in not a few common law decisions, until recently it has seldom, if ever, come up in a court of admiralty with regard to carriers by sea. The judgments of a court of admiralty, though not professing to follow common law decisions, are often based on principles quite analogous to the common law rules. And obviously the above reasons of public policy in regard to this matter apply equally well to carriers by sea. It is gratifying to note, therefore, that the English admiralty court has lately decided the question in accord with what seems to be the sounder view. *The Stella*, The Law Times, April 14, 1900.

Duty to Look Out for Trespassers on a Railroad Track. — The employees of a railroad company, while operating a train, are, in most jurisdictions, held to a duty of using reasonable care under the circumstances towards trespassers on the track, after they have been seen, but to no obligation to keep a lookout for them. *Chenery* v. *Fitchburg Ry. Co.*, 160 Mass. 211; *Scheffler* v. *Minneapolis & St. L. Ry. Co.*, 121 N. W. Rep. 711 (Minn.). A broader duty to use reasonable care to look for trespassers has, however, been recognized in a few courts. *Texas & P. Ry. Co.* v. *Watkins*, 29 S. W. Rep. 232 (Texas Sup. Ct.); *Pickett* v. *Wilmington & Weldon R. R. Co.*, 117 N. C. 616. In a recent case, where a trespasser was killed by a train, the court agreeing with the first and generally accepted view, held that the duty of using reasonable care only existed after the trespasser was seen. *Cleveland, C. C. & St. L. Ry. Co.* v. *Tartt*, 99 Fed. Rep. 369 (C. C. A., Seventh Cir.).

Recovery has been sometimes barred in such cases on the ground that contributory negligence is proven by the mere act of trespass. But by the better authority a trespass is only evidence, not conclusive proof of negligence. Therefore one who trespasses without thereby incurring such risk as to be called negligent, and who suffers an injury which might have been averted had the engineer been reasonably watchful, can be barred of an action only because the latter is not bound to keep a lookout. But if reasonable care is required towards such trespassers as are seen on the track, on the principle that acts causing probable damage to others are forbidden, why should no care be required towards such as are likely to be on the track, and to be injured unless warned? Certainly an engineer cannot assume that no one will commit the merely technical wrong of walking on or crossing the track when he knows that at a certain place such trespassing is frequent, or that some special circumstance, such as a fire close to the track in a city, makes it extremely probable. Accordingly a failure to look out for trespassers can be warranted only on the ground that the engineer's other duties of watching his machinery, and regulating his time and speed, involve such serious consequences to a large number of passengers, that he should not be turned from them by an additional duty towards persons voluntarily incurring a certain risk. But as the measure of care should be only that which circumstances make reasonable, no duty exists to keep a lookout when more important duties interfere.

Frequent accidents would be the inevitable result of running fast trains if no lookout whatsoever were kept. Apparently it is only the assump-